

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	Confirmation No.: 2418
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Dean TAN et al.	:	Group Art Unit: 2193
	:	
Serial No.: 09/872,234	:	Examiner: William H. Wood
	:	
Filed: May 31, 2001	:	
	:	
For: TECHNIQUES FOR AUTOMATICALLY	:	
INSTALLING AND CONFIGURING	:	
DATABASE APPLICATIONS	:	
	:	

CERTIFICATE OF TRANSMISSION VIA EFS-WEB

Pursuant to 37 C.F.R. 1.8(a)(1)(ii), I hereby certify that this correspondence is being transmitted to the United States Patent & Trademark Office via the Office electronic filing system in accordance with 37 C.F.R. §§1.6(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST.

Submission date: 10/03/07 by /CraigGHolmes#44770/

**REQUEST TO CONSIDER PREVIOUSLY FILED INFORMATION DISCLOSURE
STATEMENT THAT THE APPLICANT FILED ON SEPTEMBER 17, 2003**

Hon. Commissioner for Patents
Mail Stop AMENDMENT
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTION

This Request to Consider Previously Filed Information Disclosure Statement (IDS) is directed to the IDS filed by the Applicant on September 17, 2003, but that was not subsequently added to the Office's file for the present Application. In the words of the Examiner from the Advisory Action mailed on November 1, 2006, the September 17, 2003 IDS "does not exist." Yet the Applicant received a postcard stamped by OIPE and dated September 22, 2003, thereby indicating that the Office did in fact receive the September 17, 2003 IDS.

For the reasons indicated below, the Applicant respectfully requests entry of the September 17, 2003 IDS into the file for the present Application based on the original filing

date for the IDS of September 17, 2003, that the references identified thereon be considered by the Examiner, and that a copy of the Form 1449 for this IDS, with the references thereon each initialed and the Form 1449 dated and signed by the Examiner to indicate that the references have been considered, be returned to the Applicant with the next communication from the Office.

DISCUSSION

(1) SEQUENCE OF EVENTS

On September 17, 2003, the Applicant filed an IDS with a three-page Form 1449 listing 25 references, and the Certificate of Mailing on the last page of the IDS indicates that the IDS was deposited with United States Postal Service on September 17, 2003. Please see the attached copy of the IDS and Form 1449 that were filed on September 17, 2003.

Note that since 21 of the 25 cited references are all U.S. Patents, copies of those three cited references are not provided herein, consistent with current Office practice to not provide copies of U.S. Patents, per MPEP §609.04(a)(II). Copies of the two foreign patent references and copies of the two non-patent references are included herein.

The September 17, 2003 IDS was filed with a postcard that identified the Application by serial number and listed the contents of the IDS as follows:

- 1) Information Disclosure Statement (3 pgs)
- 2) PTO 1449 (3 pgs)
- 3) 25 References Cited
- 4) Return Acknowledgment Postcard

The Applicant received back from the Office the postcard that was stamped by the OIPE with a date of September 22, 2003, indicating that **this September 17, 2003 IDS was received by the Office on September 22, 2003.** Please see the attached copy of the postcard.

However, the Applicant has not received back from the Office an initialed, signed, and dated Form 1449 to indicate that the references listed thereon for the September 17, 2003 IDS have been considered.

On December 20, 2006, the Applicant filed a Petition for Revival of an Application for Patent Abandoned Unintentionally that included a Request for Continued Examination (RCE) and copies of all the Form 1449's from the fifteen IDS's filed prior to that date, including a copy of the September 17, 2003 IDS along with a copy of the stamped postcard that the

Applicant received from the Office that confirms that the September 17, 2003 IDS was in fact received by the Office on September 22, 2003.

The Advisory Action mailed on November 1, 2006 was accompanied by copies of 13 of the 15 Form 1449's sent by the Applicant, omitting the Form 1449's for the September 17, 2003 and June 4, 2004 IDS's. (Note that a separate Request to Consider Previously Filed IDS is being filed to address the June 4, 2004 IDS.) The Advisory Action stated on the continuation sheet that "IDS (9/17/03; 6/4/04) do not exist in the application," despite the Applicant having provided copies of the postcards for both of these two IDS's that indicate that those two IDS's were indeed filed by the Applicant.

The Applicant has accessed PAIR for this Application to determine what, if anything, from the September 17, 2003 is reflected in the Transaction History and/or the Image File Wrapper for the present application. And the Applicant has confirmed that there is nothing within PAIR concerning the September 17, 2003 IDS at or around the time that the September 17, 2003 IDS was originally filed.

(2) APPLICANT'S UNDERSTANDING OF THE STATUS OF THE SEPTEMBER 17, 2003 IDS

Based on this sequence of events, the Applicant has concluded that (1) the September 17, 2003 IDS, although received on September 22, 2003 by the Office as indicated by the stamp on the returned postcard, has failed to make it into the file for the present Application and (2) that the Applicant's providing of an additional copy of the September 17, 2003 IDS, including the postcard that shows that the September 17, 2003 IDS was received by the Office on September 22, 2003, as an attachment to an Office Action response is not sufficient for the Examiner to have the September 17, 2003 IDS entered into the file and have the references identified on the September 17, 2003 IDS considered by the Examiner.

Therefore, the Applicant understands that the September 17, 2003 IDS has not been considered.

(3) RELEVANT RULE AND MPEP GUIDANCE

According to 37 CFR §1.8 "Certificate of Mailing," "correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as

being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.”

According to MPEP §503 (“RETURN POSTCARD”): “A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.”

(4) APPLICATION OF THE RELEVANT RULES AND MPEP GUIDANCE

Because the Office returned the postcard for the September 17, 2003 IDS with a stamp by the OIPE showing a date of receipt by the Office of September 22, 2003, the Applicant respectfully submits that the September 17, 2003 IDS was received by the Office. However, following receipt on September 22, 2003, the contents of the September 17, 2003 IDS were not placed into the file for the present Application, for reasons unknown to the Applicant.

Nevertheless, based upon MPEP §503, the postcard “serves as *prima facie* evidence of receipt” of the September 17, 2003 IDS.

Therefore, the Applicant respectfully submits that the enclosed copy of the September 17, 2003 IDS be considered as if the originally filed papers had not been lost and had been placed into the file following receipt by the Office on September 22, 2003.

CONCLUSION

The Applicant respectfully requests entry of the September 17, 2003 IDS into the file for the present Application effective as of the date the IDS was filed, that the references identified thereon be considered by the Examiner, and that a copy of the Form 1449 for this IDS, with the references thereon each initialed and the Form 1449 dated and signed by the Examiner to indicate that the references have been considered, be returned to the Applicant with the next communication from the Office.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the consideration of the IDS previously filed by the Applicant on September 17, 2003 in the present application.

To the extent necessary to make this reply timely filed, the Applicant petitions for an extension of time under 37 C.F.R. § 1.136.

If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

/CraigGHolmes#44770/

Craig G. Holmes

Reg. No. 44,770

Date: October 3, 2007

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Attachments:

- 1) COPY of Postcard Stamped by OIPE and Dated September 22, 2003 (1 page)
- 2) COPY of IDS Filed on September 17, 2003 (3 pages)
- 3) COPY of Form 1449 Filed with IDS on September 17, 2003 (3 pages)
- 4) Copies of 2 Foreign Patent Documents Cited on the Form 1449 (21 & 43 pages)
- 5) Copies of 2 Non-Patent Documents Cited on the Form 1449 (7 pages each)